

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEFORGE MARITIME TOWING, LLC, a
Washington limited liability company,

Plaintiff,

v.

HAMILTON CONSTRUCTION, LLC, an
Alaska limited liability company,

Defendant.

AND CONSOLIDATED ACTION.

In Admiralty

Case No. 2:23-cv-00827-JCC

(Consolidated with 2:24-cv-00369-
JCC)

~~PROPOSED~~ PRETRIAL ORDER

Pursuant to LCR 16(1), the parties submit this Pretrial Order:

1. Federal jurisdiction

This matter involves the alleged breach of a Bareboat Charter Agreement by Defendant Hamilton Construction, LLC and Defendant Jeff Hamilton and is an admiralty and maritime claim within the meaning of Fed. R. Civ. P. 9(h). Jurisdiction is properly invoked pursuant to 28 U.S.C. §1333.

2. Which claims for relief Plaintiff intends to pursue at trial

1. Plaintiff intends to pursue its claim against Defendants for the cost to repair the physical damage, including the costs attendant to dry-docking and lost usage, sustained by the barge THELMA 302 while on charter to Defendants.

1. 2. Plaintiff intends to pursue its claim against Defendants for unpaid charter
2. hire.

3. 3. Plaintiff intends to pursue its claim against Defendants for the costs
4. incurred by Plaintiff attendant to the re-taking of the barge THELMA 302 from
5. Defendants.

6. 4. Plaintiff intends to pursue its claim against Defendants for attorney's fees
7. and costs.

8. 5. Plaintiff will further seek pre-judgment and post-judgment interest.
9.

10. **Which affirmative defenses and/or claims for relief defendant intends to**
11. **pursue at trial, stated in summary fashion:**

12. 1. Hamilton asserts that the damage to the barge noted in the Off Hire survey
13. is ordinary wear and tear for which Hamilton is not liable.

14. 2. Hamilton denies DeForge is entitled to any charter hire after the barge
15. arrived in Bellingham because Dan DeForge told him on December 16, 2023 that the
16. barge should kept in Bellingham until DeForge had work for the barge.

17. 3. Hamilton deny the damage the plaintiff is entitled to any charter hire
18. beyond the vessel costs \$470,804.09 to repair, and that Hamilton Construction or
19. Hamilton is responsible for the repair costs.
20.

21. 4. Hamilton Construction and Hamilton deny the reasonable cost to tow the
22. vessel from Bellingham to Seattle is \$92,866, and that Hamilton Construction or
23. Hamilton are responsible for the costs.
24.
25.
26.

1. 5. DeForge's claims for charter hire are estopped related to the alleged late
2. redelivery of THELMA 302 because DeForge agreed that the barge should be stored by
3. Hamilton Construction at no expense to DeForge.

4. 6. Hamilton is entitled to a set off of the \$25,000 paid by Traveler's to settle
5. DeForge's claims against it.

7. 7. Hamilton is entitled to its attorneys' fees incurred in defending this
8. lawsuit.

9. **3. Relevant facts about which Plaintiff asserts there is no dispute and which**
10. **Defendants are prepared to admit**

11. 1. Plaintiff DeForge Maritime Towing, LLC is the owner *pro hac vice* of the
12. Barge THELMA 302, O.N. 569658.

13. 2. The barge THELMA 302 is an ABS (American Bureau of Shipping)
14. classed barge. In order to maintain class, ABS requires that the barge be surveyed on an
15. annual basis and requires that it be drydocked on a five year interval.

16. 3. On August 23, 2022 Plaintiff DeForge Maritime Towing, LLC chartered
17. the barge THELMA 302 to Defendant Hamilton Construction, LLC. The Charter
18. Agreement was drafted by DeForge.

19. 4. As part of the Charter Agreement, Defendant Jeff Hamilton signed a
20. personal and unconditional guarantee guaranteeing the payment and performance of each
21. of Hamilton Construction, LLC's obligations under the Charter Agreement.

22. 5. Article 1.1 provides:

23. [DeForge] agrees to bareboat charter and CHARTERER agrees to hire the barge
24. THELMA, O.N. 569658 (the "Vessel") for cargo movement from Fairhaven,
25. Washington to Port McKenzie, Alaska (the "Voyage"). The Vessel shall be
26. delivered to CHARTERER at its present berth in Seattle, Washington and

positioned by assist tugs to a location in Elliott Bay, West Seattle Bouy, Washington on or about August 23, 2022, where CHARTERER's tug vessel shall receive the Vessel. CHARTERER shall move the Vessel to Fairhaven, Washington, where it shall be loaded with cargo for the Voyage where it will be loaded with cargo of the Customer. The Vessel shall be redelivered by CHARTERER to OWNER at its present berth in Tacoma, Washington. The charter term shall commence upon the Vessel departing its berth in Tacoma, Washington until its return to the same location following redelivery in the same condition as upon its departure. reasonable wear and tear excepted ("Term").

6. Article 2.1 provides:

CHARTERER shall pay OWNER \$3,100.00 for each day or portion thereof during the Term, for the hire and use of the Vessel. All deposits of CHARTERER with OWNER shall be applied to CHARTERER 's obligations as set forth in this Agreement as they are incurred or earned, as applicable.

7. Article 5.1 provides:

The Vessel shall be redelivered to OWNER afloat and moored at OWNER'S present berth in Tacoma, Washington in the same good order and condition, ordinary wear and tear excepted as when delivered to and accepted by the CHARTERER.

CHARTERER shall be solely responsible for any cost to restore the Vessel to its same condition, ordinary wear and tear excepted, as at the time of delivery to CHARTERER, and the Vessel shall remain on hire until such work is accomplished.

8. Article 17.7 provides:

Any suit, action or proceeding brought by either party to enforce any term or provision of this Agreement shall be commenced in the United States District Court for the Western District of Washington. The prevailing party in any such suit, action or proceeding shall be entitled to recover its costs of suit and reasonable attorney's fees. As stated in Article 17.7 of the Charter Agreement, the prevailing party in any litigation concerning the Charter shall be entitled to recover its costs of suit and reasonable attorney's fees.

9. Article 1.4 provides:

The Vessel shall be used by CHARTERER only in and upon the inland waters within the Puget Sound, to transit to Port Mackenzie, Alaska, and such navigation as necessary between such locations. subject to any and all limitations. conditions or restrictions herein provided and/or contained in any policy, contract or

1. certificate of insurance procured by CHARTERER in accordance with the
2. provision of this Agreement, and only where the Vessel can, at all times and
3. under all conditions of tide and weather, safely lie afloat. Under no circumstances
4. shall the Vessel be grounded or allowed to touch bottom. As stated in Article 1.4
of the Charter Agreement, “under no circumstances shall the vessel be grounded
or allowed to touch bottom.”

5. 10. Article 6.2 of the Charter Agreement provides:

6. An underwater bottom damage inspection shall be required as part of the off-hire
7. survey with subsequent drydocking if bottom damage is observed or suspected by
8. either party. If a drydocking is required as a result of the off-hire survey,
9. CHARTERER shall bear the costs of such drydocking. All other costs and
10. expenses incurred in each of the inspections and surveys above shall be borne by
CHARTERER with an estimated but not warranted cost of \$4,000.00, not
including any drydocking.

11. 11. Under Article 9, Hamilton was to procure and maintain at its sole cost and
12. expense, “Hull and Machinery Insurance upon the vessel coving all risks of loss[.]
13. Hamilton Insurance procured a policy from Travelers Insurance to satisfy its obligations
14. under the Charter.

15. 12. On August 22, 2022, an “on-hire” survey was performed on this barge by
16. Captain Mark A. McElwaine of Alexander Gow as called out in Article 6.1.

17. 13. Captain McElwaine also performed the “off-hire” survey on this barge. He
18. first attended the barge on January 3, 2023 and then again on February 9, 2023. The
19. reason two sessions were required was because the stern rake of the barge could not be
20. inspected due to silt build up in in the rake of the barge. The Off hire survey noted
21. additional damage.

22. 14. Hamilton paid charter hire though December 22, 2022.

23. 15. DeForge did not have any available work for the THELMA 302 between
24. December 22, 2022 and March 31, 2023.

1. 16. On March 31, 2023, DeForge retrieved the Barge from Hamilton's facility
2. in Bellingham to charter to Kiewit.

3. 17. On April 7, 2023, ABS conducted its annual survey of the barge.

4. 18. The barge went on charter to Kiewit without any repair work being
5. completed.

6. 19. In January of 2024, DeForge requested that ABS let it conduct a dive
7. survey in lieu of a drydock for the ABS mid term survey. This request was granted.

8. 20. Between January 31 and March 1, 2024, ABS conducted its mid term
9. survey of the THELMA.

10. 21. On February 26, 2024, the underwater dive survey was completed for
11. ABS compliance. The dive survey showed no underwater damage.

12. 25. On March 11, 2024, ABS issued a report outlining its findings, including
13. what repairs are necessary to maintain class.

14. 26. The THELMA needs to be drydocked in 2026 to maintain class.

15. 27. DeForge settled with Travelers for \$25,000.

16. **4. Issues of law**

17. Plaintiff is presently unaware of any issues of law which this Court will have to
18. resolve in deciding this matter.

19. **Objections, additions or changes which defendant believes should be made to**
20. **plaintiff's statement of issues of law:**

21. 1. Whether DeForge is estopped from claiming charter hire after December
22. 22, 2022.

2. Whether DeForge and Hamilton amended the charter party through actions and conversation so that Hamilton is not responsible for charter hire after December 22, 2022.

3. Whether the requirement to pay charter hire after December 22, 2022 is an unenforceable penalty because DeForge suffered no damages.

4. Whether Hamilton is entitled to an offset for the amount paid by its insurance company.

5. (a) The names and addresses of all witnesses who might be called by Plaintiff, and the general nature of the expected testimony of each

1. Dan Deforge (will testify)
c/o Holmes Weddle & Barcott

Mr. Deforge will testify about the condition of the barge at the time of the commencement of the charter and at the end of the charter including the damages to the barge sustained while being chartered to Defendant. He will testify about the damages incurred by Plaintiff in this matter, including the cost to drydock and repair and lost charter hire. He will also testify about the relationship between the title owner of the barge and Plaintiff herein. He will testify about a phone call with Mr. Hamilton on or about March 18, 2023 in which Mr. Hamilton said that the barge had grounded while under charter and provided other details of that event.

2. Eric Edwards (will testify)
c/o Holmes Weddle & Barcott

Mr. Edwards will testify about the condition of the barge at the time of the commencement of the charter and at the end of the charter including the damages to the barge sustained while being chartered to Defendant. He will testify about the damages

1. incurred by Plaintiff in this matter, including the cost to drydock and repair and lost
2. charter hire. He will also testify about the relationship between the title owner of the
3. barge and Plaintiff herein. He will testify about a phone call with Mr. Hamilton on or
4. about March 18, 2023 in which Mr. Hamilton said that the barge had grounded while
5. under charter and provided other details of that event, and his subsequent e-mail to Mr.
6. Hamilton concerning that call. He will testify about other telephone calls and
7. communications with Mr. Hamilton. He will testify about his personal experience with
8. the State of Washington regarding performing repair work on a vessel while afloat
9.

10. 3. Captain Mark A. McElwaine (will testify live or by deposition)
11. Alexander Gow, Inc.
12. 221 First Avenue, W., # 115
13. Seattle, WA 98119
14. 206-285-0520

15. Captain McElwaine is a marine surveyor and will testify in accordance with his
16. two survey reports in this matter (which are already in Defendants' possession). His
17. testimony will be based on his survey findings as well as his training and experience in
18. the field.

19. 4. Arthur W. Faherty (will testify live)
20. Robson Forensics
21. c/o Holmes Weddle & Barcott

22. Mr. Faherty is a retained expert witness and will testify in accordance with his
23. expert report in this matter (which is already in Defendants' possession). His testimony
24. will be based on his review of the case materials as well as his training and experience in
25. the field.

26. 5. Captain Nicholas J. Lewis (will testify live)
Robson Forensics
c/o Holmes Weddle & Barcott

1. Captain Lewis is a retained expert witness and will testify in accordance with his
2. expert report in this matter (which is already in Defendants' possession). His testimony
3. will be based on his review of the case materials as well as his training and experience in
4. the field.

5.
6. Christopher Holcomb (will testify by deposition)
Travelers Insurance
7. c/o Gibson Robb & Lindh

8. Mr. Holcomb is a technical specialist for Travelers Insurance who will testify via
9. deposition in this matter. As stated in his deposition, Mr. Holcomb will testify that Mr.
10. Hamilton told Travelers that the barge had grounded while on charter.

11. 7. Motive Power Marine (will testify live)
12. 401 E Alexander Ave
13. Ste 407
Tacoma, WA 98421
14. 253-943-6898

15. Motive Power Marine is a repair marine facility in Tacoma, Washington which
16. Plaintiff has engaged to perform certain repair work aboard the barge, and provide cost
17. estimate for repair work pertinent to this lawsuit. A representative of Motive Power
18. Marine will provide testimony about the costs to repair the damages sustained by the
19. barge.

20. **(b) The names and addresses of all witnesses who might be called by
defendant, and the general nature of the expected testimony of each:**

21. HAMILTON CONSTRUCTION, LLC
22. 1. Jeffrey Hamilton
23. c/o Bauer Moynihan & Johnson LLP
24. 2101 Fourth Avenue, Suite 2400
Seattle, WA 98121 206-443-3400

25. *Will testify*

1. Mr. Hamilton will be called to testify regarding his observations as owner of
2. Hamilton Construction, his relationship with DeForge, the condition of the barge, and
3. representations made by DeForge related to the barebone charter between Hamilton
4. Construction and DeForge, consistent with the testimony he offered at deposition.

5. 2. Mark A. McElwaine

6. *Will testify live or by deposition*

7. Mr. McElwaine will be called to testify about his inspection of THELMA 302
8. before and after the charter, consistent with the testimony he offered at deposition.

9. 3. Brian Polinkus
10. c/o Bauer Moynihan & Johnson LLP
11. 2101 Fourth Avenue, Suite 2400
12. Seattle, WA 98121 206-443-3400

13. *Will testify live or by deposition.*

14. Captain Polinkus will testify as to his knowledge as a captain of the tug, Ann
15. Marie, which towed THELMA 302 from the Puget Sound to Port Mackenzie. Including
16. the events of October 6, 2022, and his observations related to the other events described
17. in plaintiff's complaint, consistent with the testimony he offered at deposition.

18. 4. Jeff Slesinger
19. c/o Bauer Moynihan & Johnson LLP
20. 2101 Fourth Avenue, Suite 2400
21. Seattle, WA 98121 206-443-3400

22. *Will testify*

23. Mr. Slesinger will be called to testify regarding the report he produced related to
24. surveys conducted by Alexander Gow, Inc. the alleged grounding incident on October 6,
25. 2022, repairs, maintenance, and observations related to the events described in Plaintiffs'
26. complaint, including repairs and inspections performed on THELMA 302.

5. Clayton DeForge
c/o Holmes Weddle & Barcott

May testify

Mr. DeForge may testify regarding the ABS inspections and his interactions with the ABS Surveyors.

6. Brock Lemley
Pacific Cost Welding & Marine
Bellingham, Washington

May Testify

Mr. Lemley will testify regarding the condition of the barge when he inspected it or provide his quote and the anticipated cost of repairing the barge.

6. A list of all exhibits which will be offered by Plaintiff at the time of trial, except exhibits to be used for impeachment only, and a statement of whether the Plaintiff intends to present exhibits in electronic format to jurors

As this is a bench trial, Plaintiff does not intend to present any of these exhibits in electronic format to any jurors.

| Plaintiff's Exhibits | | | | | |
|----------------------|--|--------------|---------------|-----------|----------|
| Ex. # | Description | Authenticity | Admissibility | Objection | Admitted |
| 1. | Charter agreement between the owner of the Barge and Plaintiff DeForge Maritime Towing LLC | | X | | |
| 2. | The August 23, 2022 Charter Agreement between Plaintiff DeForge Maritime Towing LLC and Defendant Hamilton Construction, LLC | | X | | |
| 3. | The August 22, 2022 "On Hire" | | X | | |

| | | | | | | |
|-----|-----|---|--|---|--|--|
| 1. | | Survey completed by Captain Mark A. McElwaine | | | | |
| 2. | | | | | | |
| 3. | 4. | The January 3, 2023 and February 9, 2023 "Off Hire" Survey completed by Captain Mark A. McElwaine | | X | | |
| 4. | | | | | | |
| 5. | | | | | | |
| 6. | 5. | The April 5, 2023 "On Hire" Survey completed by Captain Mark A. McElwaine | | X | | |
| 7. | | | | | | |
| 8. | | | | | | |
| 9. | 6. | The June 20, 2023 "Off Hire" Survey completed by Captain Mark A. McElwaine | | X | | |
| 10. | | | | | | |
| 11. | | | | | | |
| 12. | 7. | The January 14, 2021 International Inspection survey report | | X | | |
| 13. | | | | | | |
| 14. | 8. | The March 20, 2023 e-mail from Eric Edwards to Jeff Hamilton | | X | | |
| 15. | | | | | | |
| 16. | 9. | The Certificate of Documentation for the barge THELMA 302 | | X | | |
| 17. | | | | | | |
| 18. | | | | | | |
| 19. | 10. | The May 5, 2021 Certificate of Inspection for the barge THELMA 302 | | X | | |
| 20. | | | | | | |
| 21. | 11. | The International Load Line Certificate for the barge THELMA 302 | | X | | |
| 22. | | | | | | |
| 23. | | | | | | |
| 24. | 12. | The ABS Class Certificate for the | | X | | |
| 25. | | | | | | |

| | | | | | | |
|-----|-----|---|---|---|-------------------------------|--|
| 1. | | barge THELMA 302 | | | | |
| 2. | 13. | The March 2024 repair estimate for the barge THELMA 302 | X | | Hearsay | |
| 3. | | | | | | |
| 4. | 14. | Motive Power Marine repair estimate | | X | | |
| 5. | | | | | | |
| 6. | 15. | ESR repair estimate | | X | | |
| 7. | 16. | Photo of the Port Mckenzie terminal | | X | | |
| 8. | | | | | | |
| 9. | 17. | Diagram of damaged areas of the Barge | | X | | |
| 10. | | | | | | |
| 11. | 18. | Travelers file note regarding communications with Mr. Hamilton | | X | | |
| 12. | | | | | | |
| 13. | 19. | Text messages between Mr. Hamilton and Mr. Deforge | | X | | |
| 14. | | | | | | |
| 15. | 20. | Pages from the logbook of the tug ANN MARIE | | X | | |
| 16. | | | | | | |
| 17. | 21. | A chart showing the AIS coordinates set out in Nick Lewis' report | | X | | |
| 18. | | | | | | |
| 19. | 22. | Faherty Report | X | | Subject to a Motion in Limine | |
| 20. | | | | | | |
| 21. | 23. | Faherty CV | | X | | |
| 22. | 24. | Lewis Report | X | | Subject to a Motion in Limine | |
| 23. | | | | | | |
| 24. | 25. | Lewis CV | | X | | |

A list of all exhibits which will be offered by defendant at the time of trial,
except exhibits already listed by plaintiff and exhibits to be used for

impeachment only, and a statement of whether the defendant intends to present exhibits in electronic format to jurors.

| Defendant's Exhibits | | | | | |
|----------------------|--|--------------|---------------|-----------|----------|
| Ex. # | Description | Authenticity | Admissibility | Objection | Admitted |
| A-1 | Standing Agreement between Double EMC and DeForge Towing | | X | | |
| A-2 | International Inspection Steel THELMA 302 Renewal Recommendation June 2020 | | X | | |
| A-3 | July 21, 2020 Alexander Gow On Hire Survey Report | | X | | |
| A-4 | November 5, 2020 Alexander Gow Off Hire Survey Report | | X | | |
| A-5 | ABS Survey after Construction Vessel Report 09 May 2021 | | X | | |
| A-6 | ABS Survey after Construction Vessel Report 11 May 2021 | | X | | |
| A-7 | ABS Photo Report 4-Mar-2022 | | X | | |
| A-8 | ABS Survey after Construction Vessel Report 04 Mar 2022 | | X | | |
| A-9 | August 18, 2022 E-mail from Daniel DeForge to Jeff Hamilton | | X | | |
| A-10 | August 23, 2022 E-mail from Daniel DeForge to Jeff Hamilton | | X | | |
| A-11 | Text Messages between Daniel DeForge and Donovan Ross | | X | | |
| A-12 | Dive Survey January 3, 2023 | | X | | |

| | | | | | | |
|-----|------|--|--|---|--|--|
| 1. | A-13 | March 14, 2023 Letter from John Casperson | | X | | |
| 2. | A-14 | Jeff Hamilton Photographs | | X | | |
| 3. | A-15 | Pacific Coast Welding and Marine March 17, 2023 Estimate | | X | | |
| 4. | A-16 | John Casperson March 30, 2023 E-mail | | X | | |
| 5. | A-17 | ABS 07-Apr-2023 Survey Photographic Report | | X | | |
| 6. | A-18 | ABS Survey after Construction Vessel Report 9 APR May 2023 | | X | | |
| 7. | A-19 | April 5, 2023 Alexander Gow On Hire Survey | | X | | |
| 8. | A-20 | August 21, 2023 David Zanzig E-mail to ABS | | X | | |
| 9. | A-21 | ABS Letter to DeForge 16 Feb 2024 THELMA 302 Underwater Inspection in Lieu of Drydocking | | X | | |
| 10. | A-22 | 31-Jan-2024 ABS Survey Photographic Report | | X | | |
| 11. | A-23 | February 26, 2024 E-mail from Clayton DeForge to ABS Notes on UWILD Inspection Thelma 302 03/26/24 | | X | | |
| 12. | A-24 | Crux Diving February 28 2024 Dive Report. | | X | | |
| 13. | A-25 | THELMA 302 Intermediate Survey Plan Signed by Clayton DeForge February 1, 2024 | | X | | |

| | | | | | | |
|-----|------|--|--|---|--|--|
| 1. | A-26 | ABS Survey after Construction Vessel Report 12 Feb 2024 | | X | | |
| 2. | | | | | | |
| 3. | A-27 | ABS Survey after Construction Vessel Report 11 Mar 2024 | | X | | |
| 4. | | | | | | |
| 5. | A-28 | ABS Guide for Hull Inspection Maintenance | | X | | |
| 6. | | | | | | |
| 7. | A-29 | Picture of Side Shell of Vessel being worked on at Vigor | | X | | |
| 8. | | | | | | |
| 9. | A-30 | Travelers – DeForge Settlement | | X | | |
| 10. | A-31 | Jeff Slesinger CV | | X | | |
| 11. | A-32 | Slesinger drawing of the Barge | | X | | |
| 12. | A-33 | Slesinger drawing of the Barge | | X | | |
| 13. | A-34 | Slesinger Addendum January 23, 2024 | | X | | |
| 14. | A-35 | Slesinger Addendum February 20, 2025e | | X | | |

7. (a) Any portions of deposition transcripts to be offered by Plaintiff at trial, as specified in LCR 32(e), except for deposition testimony offered solely for impeachment

Attached hereto please find Plaintiff's designations of portions of the deposition of Mark A. McElwaine which Plaintiff intends to offer at trial if Mr. McElwaine is unable to testify live (Plaintiff's designations are highlighted in yellow):

- p. 5, lns. 8-9;
- p. 7, ln. 19 – p. 34, ln. 10.

Attached hereto please find Plaintiff's designations of portions of the deposition of Christopher Holcomb which Plaintiff intends to offer at (Plaintiff's designations are highlighted in yellow):

- p. 3, lns. 3-11;
- p. 8, ln. 6 – p. 11, ln. 1;
- p. 11, ln. 4 – 13, ln. 3;
- p. 14, lns. 5-9;
- p. 17, ln. 18 – p. 19, ln. 15;
- p. 20, lns. 1-21;
- p. 20, ln. 24 – p. 21, ln. 14;
- p. 22, lns. 1-13;
- p. 22, ln. 16;
- p. 25, ln. 13 – p. 26, ln. 12;
- p. 26, lns. 15-25;
- p. 27, lns. 3-10;
- p. 28, lns. 11-21;
- p. 28, ln. 24 – p. 29, ln. 9;
- p. 29, lns. 12-17;
- p. 30, lns. 16-20;
- p. 30, ln. 24 – p. 31, ln. 7.

7. (b) Any portions of deposition transcripts to be offered by Defendant at trial, as specified in LCR 32(e), except for deposition testimony offered solely for impeachment:

1. Deposition designations are provided for the following witnesses (Defendants
2. designations are in blue):

3. 1. Chris Holcomb

4. p. 4, lines 4-6

5. 2. Mark McElwanie

6. p. 34, line 18 to p. 35, line 12

7. p. 35, line 16 to p. 44, line 15

8. p. 44, line 25 to p. 49, line 25

9. 3. Brian Polinkus

10. p. 5, lines 7-9

11. p. 6, line 26 to p. 7, line 5

12. p. 6, lines 11-15

13. p. 8, line 19 to p. 9, line 1

14. p. 9, line 12 to p. 10, line 9

15. p. 11, line 18-21

16. p. 12, line 11 to p. 28, line 2

17. p. 28, line 11 to p. 30, line 22

18. p. 31, line 22 to p. 34, line 14

19. p. 34, line 25 to p. 35, line 10

20. p. 35, line 18 to p. 36, line 15

21. These designations are provided to comply with LCR 32(e).

ACTION BY THE COURT

- (a) This case is scheduled for trial (without a jury) on June 9, 2025, at 9:30 a.m.
- (b) Trial briefs shall be submitted to the court on or before June 5, 2025.
- (c) (Insert any other ruling made by the court at or before pretrial conference.)
- This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

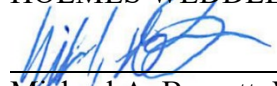
DATED this 9th day of June, 2025.



Judge John C. Coughenour
United States District Judge

FORM APPROVED:

HOLMES WEDDLE & BARCOTT, P.C.



Michael A. Barcott, WSBA #13317

Daniel P. Barcott, WSBA #50282

3101 Western Ave, Suite 500

Seattle, WA 98121

Phone: 206-292-8008

Fax: 206-340-0289

Email: mbarcott@hwb-law.com

dbarcott@hwb-law.com

Attorneys for Plaintiff

BAUER MOYNIHAN & JOHNSON LLP

/s/ Donald McLean

Donald K. McLean, WSBA No. 24158

John-Michael Maxwell, WSBA No. 60289

Attorneys for Defendant

2101 Fourth Avenue, Suite 2400

Seattle, WA 98121

1. Telephone: (206) 443-3400
2. Fax: (206) 448-9076
3. Email: dkmclean@bmjlaw.com
4. jmaxwell@bmjlaw.com
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.